

STATE OF ALABAMA  
ADVISORY COMMITTEE ON  
CHILD SUPPORT GUIDELINES  
AND ENFORCEMENT  
MONTGOMERY, ALABAMA

IN RE: CHILD SUPPORT GUIDELINES  
COMMITTEE MEETING  
JUNE 30, 2006

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Advisory Committee on Child Support  
Guidelines and Enforcement meeting held on  
Friday, June 30, 2006, commencing at  
approximately 10:19 a.m. at the Alabama Judicial  
Building, 300 Dexter Avenue, Montgomery, Alabama,  
reported by Laura A. Head, Court Reporter and  
Commissioner for the State of Alabama at Large.

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*Laura A. Head, Court Reporter*  
*(334) 286-4938 or (334) 202-4851*

1       ADVISORY COMMITTEE MEMBERS PRESENT:

2       Honorable Jack W. Hughes, Chairman  
3       Presiding Circuit Judge  
4       7th Judicial Circuit  
5       Calhoun County Courthouse  
6       25 West 11th Street  
7       Anniston, AL 36201

8       Honorable Lyn Stuart  
9       Associate Justice  
10      Supreme Court of Alabama  
11      300 Dexter Avenue  
12      Montgomery, AL 36104

13      Honorable John B. Crawley  
14      Presiding Judge  
15      Alabama Court of Civil Appeals  
16      300 Dexter Avenue  
17      Montgomery, AL 36104

18      Honorable Terri Bozeman Lovell  
19      District Court Judge  
20      Lowndes County  
21      P. O. Box 455  
22      Hayneville, AL 36040

23      Honorable Aubrey Ford, Jr.  
24      District Court Judge  
25      Macon County  
26      P. O. Box 830703  
27      Tuskegee, AL 36083

28      Honorable Mary C. Moore  
29      Perry County Circuit Court Clerk  
30      Perry County Courthouse  
31      P. O. Box 505  
32      Marion, AL 36756-0505

33      Mr. Stephen R. Arnold, Esquire  
34      Suite 600  
35      2025 3rd Avenue N.  
36      Birmingham, AL 35203

1 Mr. Gordon F. Bailey, Jr., Esquire  
2 Suite 230  
3 1001 Noble Street  
4 Anniston, AL 36201

5 Ms. Jennifer Bush, Esquire  
6 Legal Division  
7 Alabama Department of Human Resources  
8 Gordon Persons Building  
9 50 N. Ripley Street  
10 Montgomery, AL 36130

11 Ms. Diana McCampbell  
12 Alabama Department of Human Resources  
13 Gordon Persons Building  
14 50 N. Ripley Street  
15 Montgomery, AL 36130

16 Dr. Benjamin W. Patterson  
17 P. O. Box 138  
18 Montgomery, AL 36101

19 Mr. Bryant A. Whitnare, Esquire  
20 Suite 501  
21 215 Richard Arrington, Jr., Blvd. N.  
22 Birmingham, AL 35203

23 Ms. Julie A. Palmer, Esquire  
2522 Valleydale Road, Suite 100  
Birmingham, AL 35244-2701

Mr. L. Stephen Wright, Jr., Esquire  
2125 Morris Avenue  
Birmingham, AL 35203-4209

1 (Whereupon, the following was  
2 had and done:)

3 JUDGE HUGHES: All right. We'll call  
4 this meeting of the Advisory Committee on  
5 Child Support to order.

6 Everyone has been provided -- and we've  
7 had numerous meetings. We've had the  
8 proposals that have been presented to us by  
9 PSI and -- the name just slipped my mind.  
10 The other gentleman that who presented the --  
11 Mark Rogers. And you have been passed out a  
12 ballot type of some of the issues that we  
13 have had raised.

14 And what I want to do in this is we'll  
15 just go down that list and see where we are  
16 with the vote of the Committee on these. If  
17 we have a majority, then we will accept that  
18 without any further discussion. If we do  
19 not, then we will -- once we go through, we  
20 will go back and discuss and see if we can  
21 come up with a consensus of some of the other  
22 issues. And there are a couple of things  
23 that have come up since our last meeting that

1 I didn't include on this kind of sample  
2 ballot or guideline for us in that that we  
3 will take up later after we go through this.

4 On the biggie -- we'll take that up  
5 first -- is the child support chart. We  
6 had -- we've got four options really in  
7 this. We can keep the current chart that we  
8 have, the 2004 PSI chart that was submitted,  
9 or the 2004 PSI chart with second household  
10 adjustment, or the Cost Shares model. So we  
11 will do that.

12 All in favor of keeping the current  
13 chart unchanged that we have currently, if  
14 you would note by raising your right hand,  
15 please. We have one in favor of that. The  
16 2004 PSI chart, same indication, right hand,  
17 please. We have four in favor. The 2004 PSI  
18 chart with the second household adjustment.  
19 Three votes on that one. The Cost Shares  
20 model, same indication. Okay. One vote for  
21 that.

22 Okay. Looks like we have a runoff  
23 between the PSI chart and the PSI with the

1 second household adjustment chart. All  
2 right. Second vote, the PSI chart. Seven.  
3 There are seven on the PSI chart. PSI chart  
4 with second household adjustment. Three.

5 The Committee has voted to recommend to  
6 the Supreme Court and to the Director the  
7 2004 PSI chart be adopted as the child  
8 support guidelines.

9 Tax credit. There is possibly another  
10 category that we can put into that. And in  
11 doing some research on this, I came up with  
12 a -- I was looking for a question in the tax  
13 code, and I went to the IRS website. And  
14 their indication in that is that it didn't  
15 matter what a state court order said, that  
16 they did the -- they had their regulations.  
17 And they followed their regulations, and it  
18 didn't matter what we said. So our other --  
19 the only recourse we would have, if we  
20 ordered that, then would be to hold the other  
21 person in contempt for not signing the  
22 documentation. So another category -- and  
23 I'm going to add that category in there -- is

1 per IRS and Department of Revenue  
2 regulations. So if you'll add that as a  
3 third.

4 MR. WHITMIRE: Jack, are you saying  
5 that if you order the custodian to say, Every  
6 alternate year, you will sign that IRS form,  
7 and she doesn't, couldn't you order the clerk  
8 to sign in her place or would the IRS accept  
9 that?

10 JUDGE HUGHES: No. The IRS does not  
11 care what that divorce order says or the  
12 child support order says.

13 MS. PALMER: What if you attached a  
14 certified copy of the divorce order?

15 JUDGE HUGHES: They don't care. They  
16 follow their regulations.

17 MR. ARNOLD: They get a Form 8832 or  
18 nothing. You can send them volumes of  
19 paperwork and letters and correspondence and  
20 agreements. All they want is that little  
21 half piece of paper that says Form 8832.

22 JUDGE HUGHES: They go into their  
23 categories of who has for a certain period of

1 time and that..

2 MR. ARNOLD: That form, Julie, says, I  
3 give the exemption to the other spouse  
4 forever or on a year-to-year basis. And if  
5 it's a year-to-year, then each year the IRS  
6 has to receive a new form or it's going to go  
7 to the custodial parent.

8 DR. PATTERSON: I'm not sure I fully  
9 understand the implications of these  
10 presumptions --

11 JUDGE HUGHES: All right. It's already  
12 listed in the child support rule, Rule 32,  
13 dealing with tax credit and that it's -- so  
14 we're not changing the rule. Just leave it  
15 as is. No comment to it or anything.

16 DR. PATTERSON: That allows --

17 JUDGE HUGHES: Allows for sharing  
18 without -- to allow it now, you have to have  
19 justification for deviation. It constitutes  
20 a deviation in that. To allow for the  
21 sharing without deviation or to just take out  
22 any part dealing with the child care credit  
23 as far as taxes go and let that fall under



1 the IRS and Department of Revenue  
2 regulations.

3 DR. PATTERSON: There would be no  
4 sharing unless --

5 JUDGE HUGHES: Unless it fell under  
6 their regulations. Under their regulations,  
7 there are some categories in there where you  
8 can depending on the provision of support and  
9 all.

10 And so that would be your categories in  
11 there. We can leave it strictly up to the  
12 tax people to make that determination or we  
13 can do a deviation and then hold the person  
14 in contempt if they don't do it. That's  
15 still not going to do anything. We possibly  
16 could give a judgment for the amount that it  
17 was -- the difference it would have made as  
18 far as the court goes, if we order that in a  
19 contempt hearing for failure to execute the  
20 documentation, or we leave it now where you  
21 would have to give a deviation and you still  
22 got the contempt part, or you can just do it  
23 without having to give grounds for a

1 deviation. And so all right.

2 So the vote will be first. All in  
3 favor -- and it would be the same sign,  
4 raising your right hand. No change to the  
5 current rule. Allow for the sharing without  
6 justification for deviation. Two in favor of  
7 that. And per the IRS and Department of  
8 Revenue rules and regulations.

9 There will be no change to that rule  
10 then.

11 Adjustment for parenting time. Got  
12 that down as a two-parter in this and yes or  
13 no. And then if the majority says yes, then  
14 we will go to the type of method to determine  
15 that. All in favor of an adjustment for  
16 parenting time, raise your right hand,  
17 please.

18 JUDGE CRAWLEY: How many was that?

19 JUDGE HUGHES: Two. Two in favor of  
20 adjustment. All in favor of no adjustment  
21 for parenting time. Ten. Okay.

22 The recommendation is no adjustment for  
23 the parenting time.

1           Child care cost.. Excuse me. Credit  
2           for other children. We've got two  
3           categories: one with the preexisting, which  
4           we have currently in there, and after-born.  
5           We'll take up preexisting first. We have two  
6           ways we can do that. Well, let's take it up  
7           as two categories. All in favor of  
8           preexisting only.

9           MS. BUSH: We have a question. When  
10          you say preexisting only, does that exclude  
11          after-born or just considering the  
12          preexisting?

13          JUDGE HUGHES: Now, that would  
14          exclude -- currently in the computation of  
15          child support per the guidelines, you can  
16          only use preexisting with a valid court order  
17          in that. It is -- to take into consideration  
18          after-born, it has to be a deviation from the  
19          child support guidelines.

20          MS. BUSH: So if --

21          JUDGE HUGHES: If we address -- we  
22          can -- our choice is to leave it with  
23          preexisting only and then the method of how

1 that's done and leave the after-born for  
2 deviation and have to show a deviation, or we  
3 can address both of them within the child  
4 support guidelines and do it per a guideline  
5 amount and then do the method of how  
6 that's -- to do that. So we'll do that.

7 MS. BUSH: So it's either/or. We  
8 cannot do preexisting and after-born.

9 JUDGE HUGHES: Yes, we can. So the  
10 question is right now: Is it going to be  
11 preexisting only as far as the guideline  
12 goes? So we do have to vote again. All  
13 right.

14 All in favor of leaving the guidelines  
15 as unchanged or the rule unchanged and the  
16 computation of child support per the  
17 guidelines would include preexisting children  
18 only -- all right. All in favor of that.  
19 Okay. All in favor of including preexisting  
20 and after-born in the computation.

21 JUDGE CRAWLEY: How many?

22 JUDGE HUGHES: Seven for including  
23 both. That's the majority of the Committee

1 is in favor of including both in the  
2 computation of the child support guidelines.

3 All right. With the preexisting, the  
4 rule requires that it be pursuant to a valid  
5 court order. We have another choice in  
6 there, with proof of payment only. We have  
7 some parents who come in and say, you know,  
8 Well, I haven't been ordered to pay but I pay  
9 this much and here is the proof of my  
10 payment. Currently, that has to be used --  
11 you can use that information as a deviation.  
12 It's not part of that figure in the chart  
13 that you put in there because the chart to  
14 figure it up has a place for preexisting  
15 child support. So our question is: Do we  
16 want to have it with only with a valid court  
17 order and proof of payment or with proof of  
18 payment only? So the valid court order and  
19 proof of payment is the current rule.

20 So all in favor of leaving the rule as  
21 currently established, same sign. Twelve.  
22 That will remain as currently written.

23 For the after-born child. And the

1 first one of the issues that came up on this  
2 was with a valid court order and proof of  
3 payment. That would assume that the after-  
4 born child, that there has either been a  
5 subsequent divorce in that with an order of  
6 child support or there has been a paternity  
7 action with an order of child support, you  
8 know, where you get a court order on that.  
9 If they are still living together, it would  
10 not -- you wouldn't have a court order with  
11 that.

12 So the next one is with a -- it's a  
13 valid court order and proof of payment, proof  
14 of payment only, or a dummy CS-41 that you  
15 would do for an intact household. Just as if  
16 you were computing it for the other people,  
17 you do your CS-41. You do up a child support  
18 sheet for them as if they were adjudicating  
19 the child support, and then you would put  
20 that figure in the same as an existing order  
21 of child support in that.

22 MR. ARNOLD: Judge, just to let the  
23 Record be clear, since we are being reported

1 here, that there are some of us who voted  
2 against the after-born option in general.  
3 That was obviously voted the other way. But  
4 notwithstanding that, a vote by those who  
5 were against it regarding these options  
6 should not be deemed to be inconsistent.

7 JUDGE HUGHES: I agree.

8 MR. ARNOLD: So I just wanted the  
9 Record to reflect, even though I voted  
10 against the after-born, that my vote not  
11 being the winning side, it's still proper for  
12 me to vote for the option notwithstanding my  
13 being against it.

14 JUSTICE STUART: And I want to make  
15 sure there is a clarification here to make  
16 sure everybody understands what you're voting  
17 on. And that is that the rule adopted would  
18 be applicable in both directions regardless  
19 of gender and regardless of whether you're  
20 the custodial parent or not. I want to be  
21 sure everybody understands that because I do  
22 recall at our public hearings that there was  
23 an uproar over this issue. I just want to be

1           sure everybody understands what we're doing.

2           MS. PALMER: And, Your Honor, I think  
3           the dummy 41 sheet, actually you're talking  
4           about the dummy 42.

5           JUDGE HUGHES: You're correct.

6           MS. BUSH: And I have a question or  
7           comment. The valid court order with proof of  
8           payment and the dummy CS-42 would not  
9           necessarily be mutually exclusive in that you  
10          might have a situation where there is a court  
11          order and then there is an intact family. So  
12          when we vote, we actually -- I mean, it might  
13          be possible to vote for both of those.

14          JUDGE HUGHES: I think you're correct.  
15          I think we can. For a non-intact household,  
16          we probably need to do the choice of the  
17          two. Valid court order and proof of payment  
18          or proof of payment only for a non-intact,  
19          and then whether or not to do the dummy CS-42  
20          for an intact household.

21          For a non-intact household regarding an  
22          after-born, all in favor of including that  
23          with a valid court order and proof of



1 payment. That would be the same category as  
2 a -- as the preexisting child. Twelve.

3 All right. That leaves with an intact  
4 household and the --

5 JUSTICE STUART: I have a question  
6 about this and that is: Does this require  
7 some type of legal status? Because my  
8 experience as a Juvenile Court Judge in  
9 Baldwin County -- and I was both Juvenile  
10 Court Judge and as a Circuit Judge doing  
11 Domestic Relations cases. So I was doing it  
12 all. Thirty to forty percent, maybe higher,  
13 would be cases dealing with never-married  
14 persons. And there is the issue of never--  
15 married persons and what is the legal status  
16 of a child and whether there is a legal  
17 obligation to support or not. I just want to  
18 raise this as an issue.

19 JUDGE FORD: I would be assuming there  
20 was an intact household as a category as an  
21 obligation to support that child and even as  
22 an intact household --

23 JUSTICE STUART: There are some issues

1 here.

2 MR. ARNOLD: I'm going to bring in  
3 seven kids to live with me, and that's an  
4 intact household. And I've got seven kids.

5 JUDGE FORD: What I'm saying is, you  
6 have not been court ordered to pay for those  
7 children that are not your children  
8 biologically. You shouldn't be given any  
9 credit.

10 MR. ARNOLD: This doesn't make a  
11 distinction.

12 JUDGE HUGHES: And it may be something  
13 that would have to be a comment to the rule  
14 in that to figure in that. The Committee can  
15 make a comment of our suggestion as to how  
16 that would be applied and what would be the  
17 definition of an intact household in that.  
18 And maybe we need to get that out before we  
19 vote on that one issue and what would the  
20 Committee recommend as a definition for an  
21 intact household.

22 MR. WHITMIRE: The courts are not bound  
23 by comments.

1 MR. ARNOLD: The courts are not bound  
2 by comments and --

3 JUDGE HUGHES: I'm taking that back.  
4 Let's change it from comments to a  
5 definition. We would add a definition.

6 MR. WHITMIRE: That would be better.

7 MR. BAILEY: That would be better.

8 JUDGE HUGHES: What's the Committee's  
9 thoughts on a definition for an intact  
10 household?

11 JUDGE FORD: Ordinarily, it means two  
12 people cohabitate. In today's society, two  
13 people --

14 MR. ARNOLD: You know, that's such a  
15 transient relationship. We're making  
16 presumptions that two people are living in  
17 some sort of permanency. We're making  
18 presumptions.

19 JUDGE HUGHES: All right. Would the  
20 Committee's definition of an intact household  
21 be where there is either a common law  
22 marriage or a civil marriage, has to be a  
23 married relationship?

1 JUSTICE STUART: Well, it would have to  
2 be a common law marriage as declared by a  
3 court because, otherwise, you don't have a  
4 common law marriage.

5 MR. ARNOLD: Well, that's not correct.  
6 It's not correct. I'm sorry.

7 JUSTICE STUART: Well, you don't know  
8 whether you have one or not. You can claim  
9 to have one, but you don't --

10 JUDGE HUGHES: If you are claiming to  
11 have one, then you would have to prove it.

12 MR. ARNOLD: Right. And now you're  
13 throwing in a whole new litigated issue. Are  
14 these people married? Judge, I'm not married  
15 to her. Yes, you are.

16 JUDGE HUGHES: All right. The other  
17 thing is --

18 MR. ARNOLD: We have opened up  
19 Pandora's box with after-born, period.

20 JUDGE HUGHES: All right. With after-  
21 born children in an intact household, you  
22 would -- it would be continued under the  
23 deviation rule.

1 JUDGE FORD: I think it should be at  
2 the court's discretion. Every case has its  
3 own set of facts. To try to put it in a box  
4 and say this is the way it's got to be, I  
5 don't think is realistic. You talk about the  
6 household that person is staying in, is that  
7 really intact, that is not recognized by our  
8 legal system --

9 JUDGE HUGHES: Right.

10 MR. ARNOLD: That's going to wind up  
11 being a fight some day.

12 MS. BUSH: Why not just a legal  
13 marriage, not common law?

14 MR. ARNOLD: That is a legal marriage.

15 JUDGE FORD: Common law marriage is  
16 also recognized in Alabama as a legal  
17 marriage. We are one of three states that --

18 MR. ARNOLD: You see, this opens up so  
19 many problems.

20 JUDGE HUGHES: All right, sir.

21 MR. ARNOLD: You talk about a same-sex  
22 marriage. There are three thousand couples  
23 out in Massachusetts that have legal same-sex

1 marriages right now. They move to Alabama.  
2 The Constitution of the United States makes  
3 us give that marriage full faith and credit.  
4 To do otherwise would be to violate the U. S.  
5 Constitution. Are you going to put a  
6 constitutional issue in here with this?  
7 That's a small, minute possibility right now,  
8 but it's a possibility nonetheless that's  
9 growing. You're opening up problems that are  
10 just unfathomable. It will be the Lawyer's  
11 Relief Act. It will be the judges'  
12 nightmare, and the courts will wind -- I  
13 don't mean to give this the Aurelian slippery  
14 slope thing, but with the types of transients  
15 we have in families today, this becomes a  
16 problem.

17 JUDGE FORD: Judicial discretion is  
18 always --

19 MR. ARNOLD: But the guidelines are  
20 supposed to take away judicial discretion.

21 JUDGE FORD: I understand, but when you  
22 deal with people, as I do, where ninety  
23 percent of them are not represented by

1       counsel, most of them are either transient  
2       households, as you indicated, who have  
3       children who are being born. The children  
4       need to be treated equally as far as income  
5       source. Why should one child be -- get --

6               MR. ARNOLD: Why --

7               JUDGE HUGHES: Am I hearing that we may  
8       need to go back and vote on the preexisting  
9       and after-born again and leave after-born as  
10      it currently is?

11              MS. PALMER: No. It's just that one  
12      thing that I personally have a problem with.

13              MR. BAILEY: I think it's that last  
14      choice.

15              JUDGE HUGHES: Just on what we consider  
16      would be an intact household.

17              JUDGE CRAWLEY: That's not an issue  
18      here if we overwhelmingly voted for --

19              JUDGE HUGHES: Well, it would because  
20      you may have children that's after-born that  
21      there is no court order because you can't  
22      have a court order if they're married.

23              MR. ARNOLD: For instance, Your

1 Honor --

2 JUDGE HUGHES: If they're still  
3 married, there wouldn't be any court order;  
4 therefore, they wouldn't get credit. So  
5 we've got to address the issue of children in  
6 an intact household where there is a marriage  
7 and valid obligation.

8 MR. ARNOLD: This is not an uncommon  
9 situation. Divorce with two kids.  
10 Remarriage, one child. Divorce and a  
11 remarriage. That is now an after-born  
12 child. Remarry again. Have a fourth child.  
13 That's an intact household with an after-born  
14 child with preexisting children. That person  
15 comes in all three categories. And you're  
16 going to need a Craig computer to figure that  
17 one out on the charts.

18 MS. PALMER: Well, I have a case off  
19 the Family Law website listserve that said:  
20 I had an interesting case come in last week.  
21 The guy makes two thousand dollars a month  
22 and has three ex-wives and children by each  
23 of them. He's married again, and he and his



1 current wife work. But she has two children  
2 as well. It costs him four hundred dollars a  
3 month in family medical insurance, and he  
4 pays an additional thousand dollars per month  
5 for Rule 32 between the three mothers. On  
6 the other hand, you reap what you sow. But  
7 on the other hand, the calculation for him  
8 indicates that he pays all of his take-home  
9 pay to his exes. To top it off, he kept one  
10 of the children two hundred and forty days  
11 last year, and now that wife, who is  
12 disabled, while waiting on a lawsuit to come  
13 in doesn't work and threatens to take him  
14 back to court.

15 MR. ARNOLD: That's a law school exam.

16 MS. PALMER: I mean, you know, so this  
17 guy was married three times. He's married  
18 again, and they've got two children. Of  
19 course, I don't guess he's legally  
20 responsible for them, but it's just like, you  
21 know, Steve was talking about there. What if  
22 he adopts those two children?

23 MR. BAILEY: Aubrey, correct me if I'm

1 wrong, but isn't that the reason we deal with  
2 the issue -- all these reasons we didn't deal  
3 with the issue of after-born children in the  
4 original guidelines?

5 JUDGE FORD: We couldn't figure it out.

6 MR. BAILEY: We couldn't figure it out.

7 MS. PALMER: Well, I think if there's a  
8 court order out there from marriage number  
9 one or marriage number three, that the courts  
10 have to give recognition to the court order,  
11 don't they?

12 JUDGE HUGHES: It would be -- again,  
13 currently it's grounds under a deviation from  
14 the child support guidelines. So our issue  
15 is if we leave it at preexisting, as we've  
16 got now, then the other would continue to be  
17 a grounds for deviation. Then you have to  
18 show the grounds for deviation. If we go  
19 with both, then you've got the valid court  
20 order for both, and the problem comes up then  
21 with how do you deal with the situation of an  
22 intact household and what is defined as an  
23 intact household.

1           MR. BAILEY: Jack, if we left it like  
2           it is now but provided that the court would  
3           have discretion for after-born children only  
4           with a valid court order and proof of  
5           payment --

6           JUDGE HUGHES: Well, that's still --

7           MR. BAILEY: -- we could do that.

8           JUDGE HUGHES: What?

9           MR. BAILEY: We could require that for  
10          a deviation, though.

11          JUDGE HUGHES: Well, what if they're  
12          married, still married, and they've got kids  
13          and they're asking for a deviation?

14          MR. ARNOLD: I would ask that an  
15          additional category be placed that children  
16          of intact households not be considered in the  
17          calculation.

18          MR. WRIGHT: Judge, the vote seems to  
19          be overwhelming that if the Committee wanted  
20          to include both preexisting and after-born  
21          and rather than require, in the event of a  
22          divorce, another court order to establish  
23          what the obligation would be to give credit

1           for, why not make the intact household only  
2           category the discretion of --

3           JUSTICE STUART: I think it was only  
4           seven to five.

5           MS. PALMER: I thought it was twelve.

6           JUDGE HUGHES: It was twelve for  
7           requiring a valid court order. Seven to five  
8           on the original vote.

9           All right. On the issue of intact  
10          household, do we include intact household in  
11          the child support guidelines itself?

12          JUDGE FORD: Jack, I would be more  
13          comfortable, rather than saying intact  
14          household, saying actually married because I  
15          think there you would at least have some  
16          basis for doing what you're doing. I know  
17          that in my situation, where folks aren't  
18          married and they're still having children,  
19          you're going to have to have some  
20          discretion. If you don't, one child is going  
21          to get all the money and the others won't get  
22          any. And I know we've got to put everything  
23          in the box. Judicial discretion. Judges are

1 going to have to be judges.

2 MS. PALMER: Excuse me. And it is  
3 called guidelines. It's not called set in  
4 stone.

5 JUDGE HUGHES: But what your problem is  
6 is trying to figure it into the -- when  
7 you're doing the chart is how it's going to  
8 be figured in that and how do you come up  
9 with a figure to plug into that chart.

10 MS. PALMER: And I can understand that  
11 because I know what happened in the past  
12 before there were guidelines. And, you know,  
13 one person might get fifty dollars a month.  
14 The next person might get two thousand. And,  
15 you know, we need some sort of guidelines.  
16 But I think that's why they're called  
17 guidelines, not --

18 JUDGE HUGHES: And that was the reason  
19 for deviation and the reason that the second  
20 household or the second after-born children  
21 were put in as a ground for deviation.

22 MR. BAILEY: They gave an escape  
23 clause.

1 JUSTICE STUART: I think the issue here  
2 is, where do you draw the line between what  
3 you're going to make part of the guidelines  
4 themselves and what you're going to make a  
5 deviation for special circumstances. And I  
6 think the Committee needs to look really,  
7 really hard about where you draw that line  
8 because this is a really critical issue.

9 MR. ARNOLD: Couldn't agree more, Your  
10 Honor. You're absolutely on the mark.

11 JUDGE HUGHES: All right. We've got a  
12 vote to include the after-born in there with  
13 proof of payment. The only issue is now for  
14 a married and residing together, so-called  
15 intact household. Do we do that with a dummy  
16 CS-42 or do we do that as a basis for  
17 deviation?

18 MR. WHITMIRE: Or not do it at all.

19 JUSTICE STUART: Or not do it at all.

20 JUDGE HUGHES: Or not do it at all.

21 MR. WHITMIRE: There are three options.

22 JUDGE HUGHES: All right. So all in  
23 favor of leaving it with a valid court order

1           only for after-born children, raise your  
2           right hand.

3           MR. WHITMIRE: Is that court order and  
4           proof of payment?

5           JUDGE HUGHES: Proof of payment. Yes.  
6           All in favor of a dummy CS-42 form for -- the  
7           categories in this will be dummy CS-42 form  
8           or grounds for deviation or discretion of the  
9           court.

10          MR. BAILEY: Say that again.

11          JUDGE HUGHES: For the married, living  
12          together, the intact household thing, it will  
13          be either a dummy CS-42 or the discretion of  
14          the court. We will take a vote on the dummy  
15          CS-42 form for a married, residing together,  
16          so-called intact household. All in favor of  
17          doing the CS dummy CS-42. One on that one.  
18          Judicial discretion, all in favor of the  
19          judicial discretion ---

20          JUDGE FORD: Calling for a deviation.

21          JUDGE HUGHES: Judicial discretion for  
22          deviation. Seven. Okay.

23          That carries then. A recommendation to

1 the court will be -- for an after-born child,  
2 it will be for with a valid court order and  
3 proof of payment. And for a married and  
4 residing together, quote, intact household,  
5 it will be a judicial discretion for  
6 deviation.

7 Child care cost. I know that we will  
8 have some discussion on that. We've got a --  
9 and we will go to the other in a minute.  
10 We've got: to leave it as currently listed  
11 in the rules, the South Carolina formula that  
12 was shown in the information that we had, or  
13 if we have an other in that. And, Diana, you  
14 sent me a thing on the other on child care,  
15 so I'll let you explain that one, what you --

16 MS. MCCAMPBELL: Child care, as  
17 currently done within the Department of Human  
18 Resources, the amounts that are paid weekly  
19 as full-time rates by the department are  
20 updated every so often, sometimes on a yearly  
21 basis, sometimes a little bit longer than  
22 that. Those child care rates are paid for  
23 children up to the age of twelve, and



1 thirteen and above if the child is disabled  
2 and still requires care. And, currently, our  
3 department publishes the child care rates,  
4 whenever they are updated, to the courts and  
5 to our county officers to use when they are  
6 calculating the guidelines. And I did bring  
7 a copy of the current rates if anyone is  
8 interested. They would need to be copied if  
9 everyone wanted to see.

10 MS. PALMER: And I have a copy.

11 JUDGE HUGHES: All in favor of  
12 maintaining that rule that we followed --

13 MS. PALMER: I have another that I  
14 would like to talk about before we vote.

15 JUDGE HUGHES: Okay.

16 MS. PALMER: Again, on the Family Law  
17 listserve, it was suggested by someone in  
18 Huntsville that the day care chart -- if the  
19 combined gross income is over ten thousand  
20 dollars, that you actually go by what the  
21 actual expenses are versus going by the chart  
22 because I don't know how they come up with  
23 the numbers. But I know from our county, in

1           Shelby County, they are a good hundred --  
2           excuse me, a good about twenty to twenty-five  
3           dollars a week low, and I don't know how  
4           these numbers were calculated. But if they  
5           have a combined gross income over ten  
6           thousand dollars a month, then you can  
7           include -- you should be able to include the  
8           whole cost of the day care, not what the  
9           chart says. Or at least by agreement of the  
10          parties or -- I mean, you can always do that,  
11          but if they make over ten thousand dollars a  
12          month gross income.

13                 MR. BAILEY: Aubrey, refresh my  
14          memory. We went with the chart originally  
15          because we were concerned about custodial  
16          parents being vindictive and maybe going out  
17          and getting high-priced day care versus  
18          normal --

19                 JUDGE FORD: Plus the fact -- also the  
20          fact that people may use relative care and  
21          paying relatives, and we don't know whether  
22          or not -- they had to have some basis for  
23          that relative care. We were trying to make

1       sure there was going to be some sort of  
2       standard.

3               MR. BAILEY: I think we looked at some  
4       situations where custodial parents had gone  
5       out and gotten the highest-priced care and --

6               JUDGE FORD: Right.

7               MS. PALMER: Well, I know there are  
8       some like Covenant schools or Montessori  
9       schools that are considered day care that  
10      would be way over the charts. But as far as  
11      just a licensed day care and especially if  
12      you are what used to be over the charts, ten  
13      thousand dollars or maybe fifteen thousand,  
14      but something in there I think where, you  
15      know, they've chosen -- they can afford to  
16      choose the Covenant day care or the  
17      Montessori or something like that versus the  
18      charts.

19              MS. BUSH: The court can deviate for  
20      that now, can't they?

21              MR. BAILEY: Yes, they can. The only  
22      concern I would have about that, Julie, would  
23      be a lot of times, we have litigation about

1       who gets to choose the day care and is that  
2       an appropriate choice and why don't they  
3       choose someone else that may be more or  
4       less. That's why I thought the chart was a  
5       good decision we made back in '86 and '87.

6               JUDGE HUGHES: Did anyone else have a  
7       choice to put down? We've got three choices  
8       then: the current method, the South Carolina  
9       formula, and the actual cost if combined  
10      income is over ten thousand. So we'll go up  
11      with the current rule which uses the DHR  
12      chart.

13             So all in favor of the current rule.  
14      Nine. The South Carolina formula. One.  
15      That's nine and one. And the actual cost if  
16      combined income is over ten thousand  
17      dollars. We've got three for that.

18             So we will maintain the current --  
19      recommend the maintaining of the current  
20      chart.

21             An issue under the child care cost --  
22      and let me -- it's not a big issue, but it  
23      may be something we may want to consider

1            putting in the rule. I know that DHR has --  
2            and Diana explained that, where their cutoff  
3            is. At some point in the years -- and I  
4            didn't realize it until an attorney came in  
5            the other day, and they had two attorneys in  
6            an argument as to what age to cut it off.  
7            And one was saying, Well, it's twelve.  
8            Okay. And the other one said, The chart  
9            doesn't say that. Where is it. I finally  
10           went back and -- well, I called Diana, and  
11           then I also went back and looked through my  
12           stuff from the years on this Committee. And  
13           in '92, there was a letter that went out that  
14           said what the age categories were, but they  
15           got left off the chart. Should we put that  
16           age category into the rule as to when it  
17           would be?

18           Does yours actually cut off at twelve  
19           or -- at the age of twelve or does it go  
20           through twelve?

21           MS. MCCAMPBELL: It goes through  
22           twelve, when the child turns thirteen.

23           DR. PATTERSON: What does the age of

1 over twelve --

2 JUDGE HUGHES: I think that DHR's  
3 rationale on that was at thirteen years of  
4 age, that they are able to, you know, be able  
5 to, you know, at least stay at home. Kids  
6 can take care of themselves for --

7 JUDGE CRAWLEY: The internet may have  
8 changed that.

9 JUDGE HUGHES: Well, if we keep -- if  
10 we maintain without changing anything, it's  
11 going to be what DHR has established. We've  
12 got an opportunity now to put it in the rule  
13 as to what it is. And if we leave it what it  
14 is, DHR needs to put out something to the  
15 courts as to what that category -- a new  
16 letter as to your age categories because that  
17 chart says sixty-plus months and that's where  
18 we ran into it because --

19 JUSTICE STUART: It probably needs to  
20 be on the chart, not in a letter.

21 MS. MCCAMPBELL: I will certainly  
22 recommend that they put that back on the  
23 chart.

1 MS. PALMER: And what if you've got a  
2 twelve-year-old and it's in the middle of the  
3 school year and, you know, the day care is  
4 willing to keep that child until the school  
5 year is over because you've got two other  
6 children at the day care? And then all of a  
7 sudden, this twelve-year-old has turned  
8 thirteen and then, you know, you've got a  
9 problem. One is staying at home by themselves  
10 and the other two are at day care or now  
11 maybe Mom says, Oh, well, this thirteen-year-  
12 old can take care of themselves. Well, let  
13 them have a four-year-old and a three-year-  
14 old as well.

15 MR. ARNOLD: We certainly want to  
16 exclude Brewington children.

17 JUDGE HUGHES: Well, and there it  
18 does. That's what Diana said. Do we want  
19 to -- all right. Do we address the age  
20 category at all? All in favor of addressing  
21 an age in the rule.

22 MS. MCCAMPBELL: Excuse me, Judge. I'm  
23 sorry. But I think the department, when they

1 placed the category here as school -- as  
2 post- or preschool or infant/toddler, for the  
3 department, that's an indication of age  
4 ranges because normally children start  
5 regular school at the age of six and beyond.  
6 But I can certainly --

7 JUSTICE STUART: I think the issue,  
8 though, is when should it stop, at least  
9 according to the guidelines. And I just kind  
10 of have in the back of my head that pursuant  
11 to the rules that y'all have used for looking  
12 at dependency cases, that above twelve is  
13 when you think it's okay for a child to be  
14 home alone and wouldn't find that to be a  
15 dependent child alone at home.

16 MR. ARNOLD: But I think defining it  
17 promotes a lot of negative things. I think  
18 society pretty well determines when child  
19 care services kind of stop. I've seen very  
20 few child care facilities or after-school  
21 care facilities that say, I'm going to take a  
22 sixteen-year-old.

23 JUDGE HUGHES: That's true. But then



1       you've also got the category that fits in,  
2       you know, maybe you've got a relative that's  
3       keeping the child. Maybe you've got an older  
4       teenager that's keeping the child. But it's  
5       a matter of figuring it into the child  
6       support. Are you going to figure it in? Are  
7       we going to set a limit when day care is  
8       actually includable in the chart, in the  
9       figuring of it? So I can see a situation  
10      where you can have a deviation or a need  
11      after that, but right now, the -- do we  
12      clarify in the rule that the child -- for  
13      purposes of computing, pursuant to the  
14      guidelines, that you include child care in  
15      that computation to a certain age?

16           MS. PALMER: Well, don't you have to --  
17      you have to look at maturity level of the  
18      child, and then you have to look -- in the  
19      summer, are we going to let a thirteen-year-  
20      old -- what if we want to send them to the  
21      YMCA camp or something like that?

22           JUDGE HUGHES: Currently, right now,  
23      you cannot get it according to the DHR chart.

1 MR. ARNOLD: Qualified licensed day  
2 care according to the present law.  
3 Relatives, your aunt, whatever, those don't  
4 qualify. So that issue is already taken care  
5 of. The question is --

6 JUDGE HUGHES: Well, anything above  
7 thirteen it would not qualify. You can get  
8 it -- you can only -- what the rule is with  
9 that, you can allow -- it doesn't matter who  
10 they have the child with, but they can only  
11 include in the chart the maximum allowed by  
12 the DHR chart. It's either the actual amount  
13 or the maximum by the DHR chart. So, yes, it  
14 can be -- it doesn't have to be a licensed  
15 day care that's taking care of the child. It  
16 can be anybody taking care of the child.  
17 It's just that you can't include it in the  
18 chart no more than what the DHR chart allows.

19 MR. ARNOLD: That's a separate issue  
20 from the age. I think we are starting to  
21 step into parenting when we step into age.

22 JUDGE HUGHES: I understand that.  
23 Right now there is an age pursuant to the

1 rule if we follow DHR guidelines, but it's  
2 not stated anywhere. So we either leave it  
3 for DHR to set the age group or we set the  
4 age group in which we include child care in  
5 the computation of the guidelines.

6 MR. WHITMIRE: I have one problem for  
7 handicapped children, and setting an age for  
8 handicapped children will not function.

9 JUDGE HUGHES: And that will be  
10 addressed, too. But the question -- all  
11 right. We've got a question now, and then  
12 we'll go into the other. Does the Committee  
13 want to set an age in the guideline rule?

14 MR. BAILEY: You mean at any age or no  
15 age at all? You mean we set an age or --

16 JUDGE HUGHES: Do we want to set an age  
17 or just leave it as it is? All right. All  
18 in favor of establishing an age in which day  
19 care costs are not included in the  
20 computation of child support pursuant to the  
21 guidelines. All right. Anybody in favor of  
22 putting it in the rule, an age. All right.  
23 All in favor of leaving it with the current

1 rule which follows the DHR regulations.

2 MR. BAILEY: Which is twelve.

3 JUDGE HUGHES: Twelve. Well, actually  
4 thirteen, through twelve. Ten in favor of  
5 leaving it the current way.

6 MR. BAILEY: Judge, did you indicate  
7 that we're going to publish this as that it  
8 is twelve so that judges and lawyers may  
9 not --

10 JUDGE HUGHES: Well, DHR needs to send  
11 out something.

12 MR. BAILEY: Yes, I think DHR needs to  
13 send out something.

14 MS. MCCAMPBELL: We will ask them to.

15 JUDGE HUGHES: We need to send out a  
16 clarification what that is.

17 MR. BAILEY: Let's do that.

18 JUDGE HUGHES: When you do your next  
19 chart, post your chart, the age group, I  
20 guess you could put down at the bottom like  
21 you've done in the other. You've got some  
22 caveats down there. You could put what the  
23 age categories would be.

1           Okay. Medical insurance. We've got  
2           three categories that we can go with on  
3           that. Leave it as currently shown, which  
4           would give the -- which would include in the  
5           form the actual amount of the insurance  
6           regardless of how many people are included on  
7           that, or prorate it only for the children on  
8           the dependent coverage. If the insurance  
9           company does not have a formula that they  
10          have that they can provide or present that to  
11          the court, then you would just take the total  
12          amount for dependent coverage and divide it  
13          by the children in that or prorate everyone  
14          on the dependent coverage. As it stands now,  
15          with dependent coverage, you get your -- you  
16          know, if they have it, you get your spouse  
17          and you get your other children. Number  
18          three on that would take in that you prorate  
19          it for everybody that's covered on that, and  
20          you would only count the ones in your  
21          particular case. You would prorate that  
22          amount out to the actual coverage in that.

23                So do we have any discussion before

1 we -- or any questions on what it is now and  
2 what our choices would be?

3 MR. BAILEY: Steve, do you want to  
4 clarify what you presented to us, I think,  
5 back in March?

6 MR. ARNOLD: I'll try.

7 MR. BAILEY: Refresh our memory, if you  
8 would.

9 MR. ARNOLD: Justice Stuart and I  
10 drafted just an outline of the -- a proposed  
11 rule change which defines health insurance  
12 cost is what this is, and it redefines the  
13 actual cost. Category one would be: The  
14 definition of health insurance cost shall be  
15 the greater of the following: The actual  
16 premium specifically charged for dependent  
17 coverage related to and for the minor  
18 children if ascertainable or, if it's not  
19 ascertainable, the proportionate share of the  
20 total health insurance premiums cost the  
21 number of children covered bear to the  
22 total. So under that category, if you have  
23 data, payroll data or whatever, that says

1 dependent coverage is X-dollars, then that's  
2 ascertained, and that's the part that factors  
3 into the calculation. Or if you don't have  
4 it, if it's a congealed premium where there  
5 is no definition as to which part is  
6 dependent and which part is not, then you  
7 would do a proportionate share which relates  
8 to, coming down: The amount to be added to  
9 the basic support obligation for computation  
10 of the total support obligation for health  
11 insurance cost shall be the equivalent of --  
12 and it's the same thing. So you define cost,  
13 and then the next category is how it figures  
14 into the basic support obligation. Does that  
15 help?

16 MR. BAILEY: It does.

17 MS. PALMER: Is that what's in front of  
18 us? Because the way I read it is just the  
19 prorate part. It's not the ascertainable  
20 part if you've got individual coverage versus  
21 family coverage.

22 MR. ARNOLD: Well, not having created  
23 the ballot, what Justice Stuart and I

1 proposed would be essentially item --  
2 category or choice number two. Choice number  
3 three was not part of our proposal, but  
4 apparently it's part of consideration for us  
5 today, which is fine.

6 JUDGE HUGHES: Steve, did I understand  
7 you correctly that your proposal in that  
8 definition right there would fit into the  
9 number two category, prorate for the children  
10 on dependent coverage?

11 MR. ARNOLD: Yeah, I think I'm assuming  
12 that choice number two is what Justice Stuart  
13 and I proposed.

14 MS. MCCAMPBELL: Judge Hughes.

15 JUDGE HUGHES: Yes, ma'am.

16 MS. MCCAMPBELL: We also have a  
17 recommendation for the definition of health  
18 insurance cost. And many of the states  
19 around the nation are adopting similar  
20 measures. Some are higher; some are lower.  
21 But we would like to recommend that a  
22 reasonable cost for health insurance be  
23 established at five percent of the gross



1           monthly income with the ability for judges to  
2           deviate from that amount if necessary, for  
3           example, if a child has a serious health care  
4           issue. But a national medical support  
5           working group recommended this standard.

6           DR. PATTERSON: That's a cap of five  
7           percent?

8           MS. MCCAMPBELL: Well, yes, but still  
9           the court would have discretion because his  
10          health insurance may be less than five  
11          percent or it may be ten dollars more than  
12          five percent or a child may have health  
13          issues. And they would have discretion to  
14          set the amount lower or higher, but that  
15          would be --

16          JUSTICE STUART: Are you saying that's  
17          a cap or are you saying that's what it would  
18          be if somebody paid less or a lot less than  
19          that?

20          MS. MCCAMPBELL: We are recommending  
21          that this be a standard and I guess in a  
22          sense be capped at that amount. But if the  
23          court still has discretion to --

1 JUDGE HUGHES: That would be a  
2 deviation if it's more than that. As it  
3 stands right now, you include the amount, the  
4 actual cost of the insurance.

5 MR. ARNOLD: The total cost.

6 JUDGE HUGHES: The total cost.

7 MR. BAILEY: Judge, could I ask Diana a  
8 question? Is this proposal -- this is not  
9 based on federal requirements at this time  
10 now for states to adopt it. We're not  
11 required to adopt this, are we?

12 MS. MCCAMPBELL: No. The Federal Child  
13 Support Enforcement has not established a  
14 standard yet, but in our last meeting with  
15 them, they did support that --

16 MR. BAILEY: Right. But it's not a  
17 requirement that we enact something like this  
18 to keep our funding.

19 MS. MCCAMPBELL: Oh, no, absolutely  
20 not.

21 MR. BAILEY: I just wanted to be clear  
22 about that.

23 MS. PALMER: Well, and if you make

1        forty thousand dollars a year times five  
2        percent, that's two thousand dollars or a  
3        hundred and sixty-seven dollars a month that  
4        would be capped. Even if I'm paying three  
5        fifty, I'd only get credit for one sixty-  
6        seven.

7                MR. ARNOLD: Or seven fifty. Find me  
8        three fifty insurance.

9                JUDGE HUGHES: We're going to add  
10       another category down here then, five percent  
11       of gross monthly income as a cap for the  
12       amount of insurance that would be includable  
13       in the computation of the guidelines.

14               All right. We've got the current rate,  
15       the current rule which includes the total  
16       amount of the insurance no matter how many  
17       people are covered on it, the prorate for the  
18       children on dependent coverage, or prorate  
19       for everyone that's on the dependent  
20       coverage, or the five percent of gross  
21       monthly income cap for the amount.

22               All in favor of keeping the rule or  
23       definition of medical insurance as currently

1       stated in the rule. No one. Prorate for  
2       children only under the dependent coverage.  
3       Seven. All right. Prorate for everyone that  
4       is covered under that dependent coverage.  
5       That would include the other spouse if they  
6       remarried in that, also. Three on that. All  
7       right. The five percent cap.

8             All right. We will recommend then that  
9       the rule be changed. That for inclusion of  
10      insurance into the chart, it will be the  
11      prorated amount for the children who are  
12      actually covered under that policy.

13            MR. BAILEY: Judge, I'd like the Record  
14      to reflect that that should be known as the  
15      Arnold/Stuart Proposal.

16            MR. WHITMIRE: You say the children --

17            MR. ARNOLD: That's rejected.

18            MR. WHITMIRE: -- (inaudible) child  
19      support.

20            JUDGE HUGHES: Well, you may not have  
21      it. What generally comes up in this  
22      situation in giving rise to that is, the one  
23      who is required to maintain the insurance has

1 remarried, has an additional family, and a  
2 lot of times there is no extra cost in adding  
3 those others on that. And, in fact, it may  
4 not even be his children, but because of the  
5 marriage, they can be included in that. And  
6 before, no matter how many people were  
7 included in it, they gave the total amount of  
8 that insurance. Now, it's prorated an amount  
9 for each child but included when you're  
10 figuring that child support. It would be the  
11 amount actually for those children that  
12 you're computing child support for.

13 Income.

14 MS. PALMER: Your Honor, Judge, I would  
15 like to -- I'm kind of confused on this one  
16 because it's delete overtime or second-job  
17 income. Because I don't think we should  
18 delete overtime. But the second job I don't  
19 think because they can just quit that job  
20 because I think those are two separate items.

21 JUDGE HUGHES: Well, as it stands right  
22 now, in the case law decision is that  
23 overtime is includable in there. It's not a

1 ground for a deviation where you come in and  
2 show this and try to get a deviation. It's  
3 up to the other side to show a reason not to  
4 include it. So that's part of the issue that  
5 has come up is that many times, there will  
6 be -- you know, just for simplification, the  
7 man and woman get a divorce. The woman has  
8 custody of the children. The man gets  
9 remarried and starts taking a second job so  
10 he can -- or is working overtime so he can  
11 support his now current family also in the  
12 matter. The previous -- the ex-wife comes  
13 back in and says, Hey, his income has gone  
14 up. I want a modification of child support  
15 per the guideline and I want you to include  
16 that in there. That has created a -- it  
17 creates an unreasonable expectation many  
18 times in doing that as to do it since we have  
19 to include it now. And so we've got a --  
20 either we leave it in as it currently is or  
21 we put it in as to include it as a deviation  
22 in that.

23 MS. PALMER: Okay. Because when I

1 first got on here, I thought it was overtime  
2 or bonuses. And when I saw the second-job  
3 income, to me that's, again, a whole  
4 different issue. A second job is different  
5 than a bonus or overtime because you're  
6 working for one employer versus working for a  
7 second employer.

8 JUDGE HUGHES: It may or may not. You  
9 know, I could theoretically put in and  
10 request all the overtime that I could get  
11 without having to go somewhere else for an  
12 employer. And so it's the same thing as a  
13 second job really when you're working  
14 overtime.

15 MS. MCCAMPBELL: Judge, we also have a  
16 recommendation for changing that definition  
17 or description you have under income. And we  
18 would like to suggest that the language be  
19 changed to read: To delete seasonal overtime  
20 and second-job income from inclusion and then  
21 base income on a standard forty-hour week  
22 plus standard routine overtime income earned.

23 JUSTICE STUART: I think there's

1           potentially a problem with a second job  
2           because there are a lot of people that work  
3           two or three part-time jobs. Certainly  
4           you're not going to say, Only your first job  
5           counts.

6           MS. PALMER: Well, and, Your Honor, I  
7           kind of resent the fact that so many things  
8           are being added today when, you know, we had  
9           -- shouldn't we have gotten a memo or --

10          JUDGE HUGHES: You did. You got this  
11          --

12          MS. PALMER: No, no. I've got a couple  
13          of new boxes on my sheet here that weren't on  
14          there.

15          JUDGE HUGHES: Well, it's the  
16          categories that are -- that we've got to  
17          address. We've got to address some of these  
18          and whether or not we leave it as it is or we  
19          go with something else. It's our  
20          determination. And if we don't want to  
21          change it, then we leave it the way it is.  
22          But those are the issues that have been  
23          raised.



1 MR. BAILEY: I think Julie's point is  
2 some of the issues -- and I certainly respect  
3 y'all and am glad y'all are joining us with  
4 some new ideas. But we really haven't had a  
5 chance to think about some of the new  
6 proposals.

7 MS. PALMER: Like the five percent of  
8 the income or what she has mentioned now or -  
9 -

10 MR. ARNOLD: Those are last minute  
11 insertions.

12 MS. PALMER: Thank you, Steve.

13 MR. ARNOLD: But imagine that, DHR --

14 MR. BAILEY: We are all guilty of that.

15 JUDGE HUGHES: You get last minute  
16 proposals in any --

17 MR. BAILEY: That's right. We're all  
18 guilty of that.

19 JUDGE HUGHES: So we need to make --  
20 that's the purpose of this Committee, to come  
21 up with a recommendation in this. And you've  
22 got a choice as to which one you want to do.

23 JUDGE FORD: I would like to address

1 the proposal. In the overtime, you have to  
2 include the other party, i. e. the employer,  
3 to determine if it's mandatory overtime.  
4 You're going to complicate your child support  
5 case. I'm here with ninety cases of folks  
6 who are lucky to have a job. And we are  
7 going to have to bring in the employers,  
8 which is going to elongate a judicial case.

9 MR. WHITMIRE: And they are going to  
10 get fired.

11 MS. BUSH: When we were discussing  
12 mandatory overtime, we were specifically  
13 thinking of employees that work shift work,  
14 and they work five days and they're off two  
15 days. And usually they have these paychecks  
16 which will have -- in there in the mix  
17 somewhere along in the month will be a forty-  
18 eight-hour week. And it's -- that's  
19 included. That's regular. It's -- they  
20 usually get a shift premium for working the  
21 evening. That's just part of what they do.  
22 They work all those different shifts, and  
23 somewhere in there, they're going to get a

1 premium for working the night shift or get  
2 some extra hours. So we were just saying,  
3 based on a forty-hour work week, unless it  
4 was a situation where it was just built in  
5 automatically in your pay that you are going  
6 to work somewhere in that month a forty-  
7 eight-hour week or get a shift premium --

8 JUDGE FORD: You have to refer to an  
9 employment contract or a shift supervisor.  
10 You have to bring somebody in.

11 MS. BUSH: You can determine that from  
12 a paycheck.

13 MR. BAILEY: Jennifer --

14 MR. WHITMIRE: Can we vote on that one  
15 now? Let's vote on that one. I think we can  
16 resolve that one real quick.

17 JUDGE HUGHES: The issue is whether or  
18 not we delete the overtime and second-job  
19 income from inclusion or automatic inclusion  
20 into the child support guidelines and base it  
21 on a standard forty-hour work week. So the  
22 question is: Do we have -- do we leave it as  
23 is or do we delete it? And I'm going to take

1       that. The delete will be the yes and leave  
2       it as is will be the no.

3           All in favor of deleting that and  
4       basing it on a standard forty-hour work week  
5       for the computation of the child support per  
6       the guidelines -- and the inclusion of  
7       anything else would certainly be a grounds  
8       for deviation. But for just doing that  
9       chart, the forty-hour work week in that, all  
10      in favor of deleting that and going with the  
11      basic forty-hour work week.

12           MR. ARNOLD: So that means I work  
13      eighty hours. I'm an income producer. I get  
14      to say, All you can consider is forty-hours'  
15      worth of my income.

16           JUDGE HUGHES: If you're on a salaried  
17      income, then it would be your income because  
18      you're not on an hourly rate. You're  
19      either -- they're paid hourly rates, and it's  
20      based strictly on the hours that they work.  
21      That's where it comes in.

22           MR. ARNOLD: So we're going to treat  
23      different classes of earners differently.

1 JUDGE HUGHES: If you are a salaried  
2 person, it doesn't make any difference how  
3 many hours you put in. You may put in thirty  
4 and get the same rate. But the others don't  
5 get paid if they don't put in the forty hours  
6 and that's --

7 MR. ARNOLD: But I can set my salary,  
8 and I do set --

9 JUDGE HUGHES: As a self-employed, then  
10 you've got another category in there. So  
11 that's not -- you've got a category for self-  
12 employed income in this, and this is strictly  
13 dealing with the hourly workers.

14 MR. ARNOLD: Well, it was defeated  
15 anyway.

16 JUDGE HUGHES: All right. It is  
17 defeated. So I guess we will leave the  
18 definition of income as including overtime  
19 and second job as it currently is, and it  
20 will be up to the other person why it should  
21 not be included.

22 We had another request that was made --  
23 or alimony paid or received as income for

1           either inclusion or a deduction in the  
2           computation.

3           MS. PALMER: Well, if it's periodic  
4           alimony, it's taxable income.

5           MS. BUSH: And I think you also have to  
6           define whether it's alimony and paid between  
7           the parties or received or paid to a third  
8           party outside.

9           MR. ARNOLD: Paid to a third party it  
10          can't be alimony.

11          MS. BUSH: What I mean is, currently  
12          the rule is, if it's alimony paid between  
13          those two parents, it's not included in the  
14          guidelines. But if the husband is paying it  
15          to another wife or if the wife is receiving  
16          it from another husband, it is included. So  
17          I think we would have to differentiate here.

18          JUDGE HUGHES: Well, I thought that was  
19          understood. It was alimony paid or received  
20          from other than the two parties.

21          MS. BUSH: Okay.

22          DR. PATTERSON: From a third party.

23          MR. ARNOLD: So that means alimony

1 received -- woman receives alimony from  
2 husband number one. She gets divorced from  
3 husband number two. That counts on her side  
4 of the income which reduces the amount of  
5 support the father would ostensibly pay. So  
6 the children are going to have their standard  
7 reduced because Mom is receiving alimony.

8 JUDGE HUGHES: Is it income to her?  
9 That's --

10 MR. ARNOLD: It goes beyond is it  
11 income to her. It goes to what impact does  
12 it have on the children. That's where we  
13 have to start considering. Because in many  
14 respects here today, we've made it possible  
15 to reduce a child's standard of living by a  
16 parent's voluntary -- noncustodial paying  
17 parent's voluntary choices. This is another  
18 one here. What happens now if Mom goes out  
19 and gets alimony modified? She's got to come  
20 back and modify child support. She loses her  
21 alimony by virtue of get being married.  
22 Again, she's got to come back and modify  
23 child support again.

1 JUDGE HUGHES: Any other comments  
2 before we vote on whether to leave it as is  
3 or to include it?

4 MR. WRIGHT: Are you talking about a  
5 situation where a woman who is receiving  
6 alimony now is seeking child support? I  
7 don't understand how she would still be  
8 receiving alimony.

9 JUDGE HUGHES: She could be receiving  
10 alimony from --

11 JUSTICE STUART: Where it's not a --

12 JUDGE HUGHES: All right. Mother and  
13 father. First marriage, they got divorced.  
14 All right. She got custody of the children,  
15 and she remarried. Second husband, they get  
16 a divorce. She gets alimony from him. All  
17 right. There is a request for a modification  
18 in that first case. She's got -- she makes a  
19 thousand dollars a month at her job at the  
20 Quickie Mart, and she gets five hundred  
21 dollars a month in alimony. Do you include  
22 the five hundred dollars a month alimony as  
23 part of her gross income? That would be the



1 situation where it would be. Is alimony  
2 going to be includable as to their income?

3 Or in the other situation, you know,  
4 maybe it's the man that's paying alimony from  
5 the second. Was that a deduction from his  
6 thing just like it would be if he's paying  
7 child support? We voted to include the  
8 after-born children in that. So if he's  
9 paying alimony also, do we leave it as is or  
10 do we include it in the chart?

11 As it stands right now, it can be  
12 utilized as a deviation, as a grounds for  
13 deviation from the guidelines. So the only  
14 thing we're dealing with is whether or not to  
15 allow it to be actually included in the  
16 computation of the child support guidelines.

17 JUSTICE STUART: There is no as is? Is  
18 there no vote as is?

19 JUDGE HUGHES: Yeah. So the categories  
20 would be, yes, we include it or, no, which  
21 would mean that the rule is left as it is.  
22 Any other discussion?

23 All right. All in favor of including

1           alimony paid or received as income or a  
2           deduction. Leave it as is. Ten.

3           We would recommend that there be no  
4           change to that rule. All right. That was --  
5           in going through the issues that we had  
6           discussed, that was it.

7           MS. PALMER: Your Honor, I have just a  
8           couple of questions. Let's go back up to  
9           medical insurance. If you read in Rule 32,  
10          in one of the little -- maybe it's a comment,  
11          but it says in there that the insurance  
12          premium should only be deducted if the  
13          obligor is actually paying, is what it says.  
14          But I believe there is case law out there  
15          that says, if it's my husband that's paying  
16          it but yet I'm obligated to keep the health  
17          insurance on the children, that premium still  
18          gets included. Is that correct?

19          MR. ARNOLD: That's the practical  
20          effect of that. The theory being that that  
21          is money that's going out of your household  
22          indirectly out of your pocket.

23          MS. PALMER: But that's an

1 inconsistency with what's under Rule 32  
2 versus what the Alabama Supreme Court has  
3 ruled, just to bring that up.

4 JUDGE HUGHES: Justice Stuart said that  
5 was a Court of Civil Appeals case, not --

6 MR. ARNOLD: I was going to say,  
7 Justice Stuart didn't have anything to do  
8 with that one. John Wilkerson decided that  
9 one. Isn't that right, Judge?

10 MS. PALMER: So I don't know if we want  
11 to correct that since we're going to be  
12 republishing all this. And then right now I  
13 believe it's a ten percent change. With all  
14 of this that's going to happen and the new,  
15 are we still going to keep it at a ten  
16 percent? Do we have that choice? Is that  
17 going to be a case for the courts?

18 MR. ARNOLD: There's no proposal to  
19 change the ten percent window. I dare say we  
20 ought not entertain such a proposal on that  
21 one.

22 MR. BAILEY: Judge, what's the next  
23 step after our votes are tabulated and

1 reduced to writing for the Record? What  
2 happens then?

3 JUDGE HUGHES: It will be submitted to  
4 the ADC. The recommendation of the Committee  
5 will be submitted to the ADC, and then it's  
6 between him and the Supreme Court to decide  
7 whether to adopt our recommendations.

8 JUSTICE STUART: I would like to note  
9 for the Record -- this is Lyn Stuart -- I am  
10 a member of the Alabama Supreme Court. And I  
11 would just like for the Record to reflect  
12 that I have abstained from voting on any of  
13 these issues. I've tried to serve on this  
14 Committee in the way that members of the  
15 Supreme Court serve on the other Supreme  
16 Court committees, and that is in an ex  
17 officio fashion. I will have a vote when the  
18 ultimate proposed rule comes before the  
19 Court, and I did not think it would be  
20 appropriate to vote twice.

21 MR. ARNOLD: Judge, what is the  
22 drafting process prior to submission to the  
23 Supreme Court for consideration?

1 JUDGE HUGHES: We have the attorneys  
2 for the Supreme Court and the Administrative  
3 Office of Courts that will draft up the  
4 recommendations.

5 MR. ARNOLD: Will those drafts be  
6 submitted and circulated to the members of  
7 the Committee in advance of submission?

8 JUDGE HUGHES: If you are requesting  
9 that, then it certainly will be. We will  
10 certainly do that.

11 MR. ARNOLD: I think all of us would  
12 like to make sure our collective intents are  
13 being submitted as we wish them to be to the  
14 Court.

15 JUSTICE STUART: Additionally, I'll let  
16 you know that from time to time, members of  
17 various committees submit memorandums,  
18 letters, et cetera, whereby they express  
19 either agreement with proposals or dissenting  
20 opinions, for lack of a better word, and  
21 that's certainly welcome. If you've got a  
22 strong opinion on any issue that you want to  
23 address, I think that would be very helpful,

1 quite frankly.

2 MR. BAILEY: And, Judge, are we  
3 anticipating that our vote being submitted to  
4 AOC and then the Supreme Court might be  
5 adopted on sometime this fall or do we know?

6 JUSTICE STUART: I will let you know  
7 that the Alabama Supreme Court twice a year  
8 schedules regular rules conferences, and we  
9 do have a rules conference scheduled for  
10 August the 30th. So this rule could arrive  
11 as an official proposal sufficiently in  
12 advance. It could go on that rules  
13 conference docket.

14 MR. BAILEY: When is the next one after  
15 August 30th?

16 JUDGE HUGHES: I think you would have  
17 an answer on this one considering the  
18 importance of the necessity from the feds  
19 that we address the chart. At least we'll  
20 get an answer on that at the August one.

21 MR. BAILEY: Judge, let me ask  
22 Jennifer: Have we done anything today that  
23 you anticipate would cause our regional folks

1 to be concerned with any action that we've  
2 taken here today?

3 MS. BUSH: No, this is all fine.

4 MR. BAILEY: They just need us to do  
5 something, as I understand it.

6 MS. BUSH: They just want us to do  
7 something, anything.

8 JUDGE HUGHES: All right. Do we have  
9 any other issues that we need to bring before  
10 the Committee at this time?

11 MR. BAILEY: Judge, I want to thank you  
12 and everybody else on the Committee for  
13 really working through these. These are  
14 difficult issues. I appreciate everybody at  
15 AOC helping us out, too. They've done a good  
16 job.

17 JUDGE CRAWLEY: What are your plans for  
18 the future for meeting on the things other  
19 than voting on the guidelines? You know,  
20 we've discussed and we've talked about other  
21 issues.

22 JUDGE HUGHES: Has there been an issue  
23 that we've discussed that we did not --

1 JUDGE CRAWLEY: No. But there was a  
2 long laundry list that was put out some time  
3 ago. And obviously as we work on these cases  
4 and stuff, we see issues. I would like for  
5 us to meet quarterly or at least correspond  
6 and think about doing meetings.

7 MS. MCCAMPBELL: The guidelines are  
8 required to be reviewed and updated every  
9 four years.

10 JUDGE CRAWLEY: I understand that but  
11 I'm saying --

12 JUDGE HUGHES: That's the chart.

13 JUDGE CRAWLEY: Yes. But we may have  
14 an issue -- I've got an issue that I would  
15 like to bring up on the presumption as to the  
16 appraised value of property. It amazes me  
17 how different spouses can be on appraising  
18 property. I've written out a proposal that  
19 the presumptive value would be the tax  
20 assessment. Everybody is going to have a  
21 big, Oh, we can't do that. The court --

22 JUDGE HUGHES: That's not part of the  
23 child support guidelines.



1 JUDGE CRAWLEY: No, no, that's right.

2 JUDGE HUGHES: We don't have a  
3 Committee that would be addressing that.

4 JUDGE CRAWLEY: The reason I got  
5 started on that is -- that's correct. I did  
6 withdraw that. But I was thinking about  
7 that, and there would be other things, too.  
8 I don't have my list with me. But couldn't  
9 we perhaps have an agreement that we could  
10 circulate ideas and maybe get the Committee  
11 back when we needed to?

12 JUDGE HUGHES: Certainly.

13 JUDGE CRAWLEY: Rather than once every  
14 four years?

15 MR. ARNOLD: I would suggest that once  
16 the drafting process is complete and the  
17 Supreme Court makes its rulings and  
18 decisions, I would suggest we probably would  
19 need to meet to see if we want to author any  
20 comments for inclusion into the rule.  
21 Comments are often helpful. In the Rules of  
22 Civil Procedure, there is always that room  
23 for committee comments. There may be some

1 areas where we wish to author some comments.  
2 That's just a thought for a future meeting.  
3 Then it could be one where we not meet, we  
4 circulate or whatever. But I think that's  
5 something we ought to keep in mind.

6 MR. BAILEY: Judge, there are going to  
7 be two major family law conferences in the  
8 next few months. The retreat to the beach is  
9 going to be in October, and then the child  
10 support conference, Jennifer, is --

11 MS. BUSH: End of October.

12 MR. BAILEY: -- end of October. So  
13 we'll have two major meetings I think where  
14 we'll certainly get some input and  
15 comments --

16 MR. ARNOLD: Yes, you will.

17 MR. BAILEY: -- on what we've done here  
18 today. So, Judge, we could -- if we wanted  
19 to meet -- Steve, I get the point -- we may  
20 want to meet sometime after October.

21 MR. ARNOLD: Any time. You know, I  
22 just think at some point in time, that should  
23 be a consideration for us. I'm not asking

1           for a vote or anything. If just our chair  
2           will keep that in mind and see what we need  
3           to do.

4           JUDGE HUGHES: Judge, what we have done  
5           previously in calling a meeting, other than  
6           to address the chart, has been when there has  
7           been some recommendations that needed to be  
8           addressed. It's been called on an as-needed  
9           basis for a Committee meeting if there has  
10          been some issues that have been brought up.  
11          And usually that's been done through the  
12          ADC. If somebody has got an issue that they  
13          want us to address, then they'll notify us  
14          through the ADC or Administrative Office of  
15          Courts, and they notify us that some issues  
16          have been brought up, that we need to call a  
17          Committee meeting. But as far as that goes,  
18          any member of the Committee can request --  
19          can send me a request, you know, to call a  
20          meeting, and we'll call a meeting of the  
21          Committee if we have got an issue that needs  
22          to be addressed.

23          MR. WHITMIRE: But don't we have to be

1 chartered by the Supreme Court for an issue?

2 JUSTICE STUART: I think this is a  
3 standing Committee.

4 JUDGE FORD: It's a standing Committee;  
5 however, it meets because there are federal  
6 requirements that must be met. And I think  
7 probably a family law committee or some other  
8 committee that's going to deal with certain  
9 nuances that come about in family law issues  
10 that are beyond child support guidelines --

11 JUDGE CRAWLEY: We focused on the  
12 guideline, on the chart, and there are other  
13 issues that we might need to look at.

14 JUSTICE STUART: I think this Committee  
15 is limited to the guidelines. That's my  
16 understanding. It doesn't have any broader  
17 scope than that. But if it's an issue that  
18 relates to the guidelines, like health  
19 insurance and things like that, then  
20 obviously that is included.

21 MR. ARNOLD: Judge Crawley, this is an  
22 extremely controversial comment over which I  
23 am not taking any sides. There are some who

1 propose a sort of unified statutory family  
2 law reform, a new family law, a new divorce  
3 statutory scheme. Some states have done  
4 that. If that were to be considered by the  
5 Supreme Court, then I think it's within the  
6 Chief Justice and the remainder of the Court  
7 to appoint a new committee, have advisory --  
8 do whatever they want if they wish.  
9 Otherwise, I think you're talking about a  
10 legislative matter.

11 JUSTICE STUART: I think that would be  
12 a legislative matter. I don't see that as  
13 being a judicial prerogative at all.

14 MR. WHITMIRE: The Law Institute has  
15 got several committees addressing those exact  
16 issues right now that are going to be  
17 presented to the legislature next year.  
18 There are committees functioning right now on  
19 those exact topics.

20 JUDGE HUGHES: Do we have anything else  
21 that we need to address as far as  
22 everybody --

23 MR. BAILEY: Judge, I would just like

1 to urge the AOC folks to -- I know they've  
2 got vacations and personal leave issues and  
3 all that. But if they could get this to the  
4 -- if we could expedite this and get it to  
5 the rules committee by August 30th, I think  
6 that would be great.

7 JUDGE HUGHES: One last thing that  
8 would be of importance to you. If you wish  
9 to apply for travel expenses, the travel  
10 vouchers are up here. It must be completed  
11 in blue ink. So there it is. And if there  
12 is nothing else then, the Advisory Committee  
13 on Child Support Guidelines and Rule 32 is  
14 hereby adjourned.

15 (Whereupon, the meeting was  
16 adjourned.)  
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STATE OF ALABAMA  
ADVISORY COMMITTEE ON  
CHILD SUPPORT GUIDELINES  
AND ENFORCEMENT  
MONTGOMERY, ALABAMA

IN RE: CHILD SUPPORT GUIDELINES  
COMMITTEE MEETING  
JUNE 30, 2006

REPORTER'S CERTIFICATE

STATE OF ALABAMA  
MONTGOMERY COUNTY

I, Laura A. Head, Court Reporter and  
Commissioner for the State of Alabama at Large,  
hereby certify that on Friday, June 30, 2006, I  
reported the Meeting of the Advisory Committee on  
Child Support Guidelines and Enforcement, at the  
Alabama Judicial Building, 300 Dexter Avenue,  
Montgomery, Alabama, and that the pages are  
numbered serially, 4 through 79, and contain a  
true and accurate transcription of said meeting,  
ending with the page number appearing at the top

**Laura A. Head, Court Reporter**  
**(334) 286-4938 or (334) 202-4851**

1 of this Certificate.

2 This 13th day of July, 2006.

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LAURA A. HEAD, Court Reporter  
Commissioner for the  
State of Alabama at Large

MY COMMISSION EXPIRES: 2/6/08

**Laura A. Head, Court Reporter**  
**(334) 286-4938 or (334) 202-4851**